

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 04-227
Competition in the Market for the)	
Delivery of Video Programming)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in the above-noted proceeding.¹ OPASTCO is a national trade association representing over 560 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

Video services are an increasingly important aspect of OPASTCO members' service offerings. Half of OPASTCO members operate small cable television companies in their rural service areas. Often these communities are not lucrative enough to attract larger providers. Other OPASTCO members offer video services via digital subscriber

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Notice of Inquiry, FCC 04136 (rel. June 17, 2004) (NOI).

line (DSL) technology in their service area, and/or in neighboring territories where they have overbuilt facilities in order to provide superior service to consumers. Some OPASTCO members provide video satellite services, while others have deployed fiber to the home in an effort to bring an array of high-speed and advanced voice, video and data services to consumers. OPASTCO wishes to emphasize that rural telephone companies' ability to successfully provide video services will encourage further deployment of broadband services in rural areas, consistent with the Commission's goals.

II. THE PROVISION OF VIDEO SERVICES BY RURAL TELEPHONE COMPANIES IS INCREASINGLY LINKED TO BROADBAND DEPLOYMENT

The NOI asks for information regarding local exchange carriers (LECs) that provide video services, and the extent to which video programming services are being bundled with telephone, high-speed Internet and other services.² OPASTCO views these items as important not only for assessing the state of video competition, but also as they relate to efforts encouraging the ubiquitous availability of broadband to all Americans.³

A growing number of rural LECs, including those that also serve as competitive local exchange carriers (CLECs) in nearby territories, are offering video services via DSL or fiber technologies, or are considering doing so within the next few years.⁴ Viodi

² NOI, paras. 30, 52, 72.

³ See, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 02-33, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3021 (2002), para. 3: “First, it is the Commission’s primary policy goal to encourage the ubiquitous availability of broadband to all Americans” (emphasis in the original).

⁴ National Telecommunications Cooperative Association (NTCA), pp. 2-3. See also, Mark Heinzl, “Battling the Cable Guy: Small Phone Companies Lead In Offering Television Service Over Beefed-Up Copper Lines,” *The Wall Street Journal*, Apr. 29, 2004, p. B1. See also, Shorecliff Communications, “Telephone Operators: Video Deployment Timetable,” indicating that 70 percent of survey respondents at

LLC, a firm that specializes in video content acquisition and marketing for rural telephone companies, has approximated the number of rural LECs that use various technologies to provide video services. Viodi calculates that:

- At least 307 rural LECs provide video via coaxial cable, hybrid fiber-coaxial networks, DSL, or fiber to the premises, and the estimated actual total could be as high as 400.
- At least 100 of these companies are using DSL technology to deliver video services, while estimates indicate that the total could be as high as 120.
- At least 23 rural LECs are providing video using fiber to the premises, with estimates ranging as high as 40.⁵

Furthermore, a recent OPASTCO survey showed that broadband penetration rates rose when other services, including video, were bundled along with advanced services. Specifically, OPASTCO members that bundle broadband with other services, such as local or long distance voice service, video, or wireless, have broadband penetration rates of 17 percent on average. This compares with an average broadband penetration rate of 10 percent for carriers that do not package other services with their broadband offerings.⁶

Clearly, the provision of video services by rural telephone companies, when bundled with advanced services, results in higher penetration rates, thereby encouraging further investment in the infrastructure necessary to deploy advanced services to more consumers. Therefore, by encouraging the entry of rural LECs into the video market, the Commission can accomplish the twin goals of providing consumers with more video

a trade show devoted to LEC deployment of video services expect to enter the video market within two years <<http://www.telcotvonline.com/telcotv04/>>.

⁵ Ken Pyle, "The Independent Telco Space According to Viodi," *The Viodi View*, Aug. 18, 2004, at <<http://www.viodi.com/newsletter/040801/article3.htm>>. The article also notes that many LECs plan to deploy fiber to new developments, and that rural LECs often have overlapping technologies, such as DSL, coaxial cable, or fiber, depending on the needs of their ILEC, CLEC and cable service areas.

⁶ OPASTCO Comments, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54, Notice of Inquiry, FCC 04-55 (fil. May 10, 2004), pp. 4, 9-10.

choices, and encouraging the further deployment of broadband in rural areas.

Unfortunately, as illustrated below, substantial hurdles remain.

III. CARRIERS SERVING SMALL MARKETS SHOULD HAVE THE FLEXIBILITY TO OFFER PROGRAMMING PACKAGES THAT MATCH THE DEMANDS OF THEIR CUSTOMERS

The NOI seeks comment regarding issues specific to video programming distribution in rural and smaller markets.⁷ As OPASTCO stated in the proceeding on “a la carte” services,⁸ programming tiers that work in large urban markets may not match the needs of consumers in sparsely populated rural areas, where the per-customer costs of providing video services are much higher. OPASTCO agrees with those commenters who assert that small carriers should have sufficient flexibility to offer programming in a manner that best suits the needs of their consumers.⁹ While the offering of programming on an “a la carte” basis should not be mandated due to the costs it can impose on small providers, carriers should have the option to make “a la carte” programming available, as well as various flexible tiers, as warranted by local market conditions.

IV. DISCRIMINATORY PRICING AND RETRANSMISSION CONSENT PRACTICES FOR RURAL PROVIDERS RAISE COSTS AND IMPEDE MARKET ENTRY

The NOI asks if programming costs for providers in smaller, rural markets are different compared to providers in other markets.¹⁰ As OPASTCO noted in the “a la carte” proceeding, small carriers serving rural markets may face discriminatory pricing

⁷ NOI, para. 30.

⁸ OPASTCO Reply Comments, *A La Carte And Themed Tier Programming And Pricing Options For Programming Distribution On Cable Television And Direct Broadcast Satellite Systems*, MB Docket No. 04-207, Public Notice, DA 04-1454 (fil. Aug. 13, 2004), p. 3 (OPASTCO A La Carte Replies).

⁹ American Cable Association (ACA), Exhibit 1, pp. 6-7, 23-28, 48-49; Broadband Service Providers Association (BSPA), pp. 22-24.

¹⁰ NOI, para. 30.

for programming.¹¹ However, direct comparisons are difficult to make due to non-disclosure provisions that programmers require small service providers to agree to in order to obtain programming.¹² Obviously, if rural carriers, who already face higher per-customer costs due to sparsely populated service areas, must pay more for programming than their larger counterparts, they will experience increased difficulty in providing video services to rural consumers.

Several commenters in the “a la carte” docket also observed that the retransmission consent process requires small video service providers to include additional channels in basic tiers, which results in fewer service options and higher prices for consumers.¹³ Practices which require small carriers to carry channels that are not wanted by their customers, or forces them to place less-popular channels in certain tiers, prevents small carriers from crafting tiers that match the demands of their individual markets.

IV. CONCLUSION

Rural telephone companies are actively offering video services to consumers. Many are, or will soon be, using new broadband technologies to provide video. The entry of rural telephone companies into the video market leads to more consumer choice and enhances the deployment of broadband, furthering a key policy goal. However, restrictive practices such as forced carriage of unwanted channels, forced inclusion of channels in certain tiers, mandatory nondisclosure provisions, and unequal treatment by content providers, all serve as barriers to rural telephone companies’ efforts to provide

¹¹ OPASTCO A La Carte Replies, pp. 3-4 (citing ACA, pp. 3-4; NTCA, pp. 4-5; Pioneer, pp. 8-9).

¹² *Ibid.* (citing ACA, pp. 8-9; NTCA, p. 3; Pioneer, pp. 5, 8; Rural Telephone Companies (RTCs), pp. 7, 10).

video services to their communities.

Respectfully submitted,

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¹³ *Id.* (citing ACA, pp. 30-37; NTCA, pp. 3-4; Pioneer, pp. 5-7; RTCs, pp. 7-11).

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail, on this, the 25th day of August, 2004, to those listed on the attached sheet.

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